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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-583

GEORGE R. DOCKING, CHARLES C. CAMPBELL, NORBERT J. SIDOROWICZ, *et al.*,
Petitioners,

vs.

STATE OF KANSAS,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

CURT T. SCHNEIDER
Attorney General for the State of Kansas
1st Floor—State Capitol Bldg.
Topeka, Kansas 66612
Attorney for Respondent

E. L. Mendenhall, Inc., 926 Cherry Street, Kansas City, Mo. 64106, 816-421-3030

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ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT

The opinion of the Supreme Court of Kansas reported at 217 Kan. 756, 539 P.2d 329 relies upon a well established line of Federal Court decisions in determining that selection of jurors from voter registration lists is not impermissible under the United States Constitution. At page 765 of the opinion it is stated:

"Our petit and grand jurors act of 1971 has the same policy requirements and is otherwise quite similar to the federal Jury Selection and Service Act of 1968 (28 USCS §§ 1861-1866). With slight exception the federal courts hold that selection of jurors from voter registration lists is not statutorily or constitutionally improper. In an annotation at 17 ALR Fed. 590, 'Jury Selection Plans' this synopsis of federal law appears:

> *'The use of either the voter registration lists or the lists of actual voters as the sole source of names of prospective jurors is not a violation of the Act, and is not constitutionally invalid unless there is discrimination in the compilation of such lists.' (p. 608).*

As a general rule a challenge based on alleged discrimination in the selection of a jury necessarily requires a showing that a recognizable identifiable class of persons, otherwise entitled to be jury members, has been purposefully and systematically excluded from jury service (*Brown* v. *Allen*, 344 U. S. 443, 97 L. ed. 469, 73 S. Ct. 397).

Defendants here did make a showing that certain groups tended not to register as voters.

In *United States* v. *Lewis*, 472 F. 2d 252 (CA3, 1973) it was stated:

> *'. . . We likewise hold that a group of persons who choose not to vote do not constitute a "cognizable group". Further, their nonregistration is a result of their own inaction; not a result of affirmative conduct by others to bar their registration. Therefore, while a fairer*

> *cross section of the community may have been produced by the use of "other sources of names," the Plan's sole reliance on voter registration lists was constitutionally permissible.' (p. 256).*

In *United States* v. *Anzelmo*, 319 F. Supp. 1106, it was further stated:

> *'Congress had both anticipated and rejected the argument that the selection of juries from voter lists would not produce a cross section of the community and would discriminate against nonvoters.*
>
> *' "In a sense the use of voter lists as the basic source of juror names discriminates against those who have the requisite qualifications for jury service but who do not register to vote. This is not unfair, however, because anyone with minimal qualifications—qualifications that are relevant to jury service—can cause his name to be placed on the lists simply by registering or voting. No economic or social characteristics prevent one who wants to be considered for jury service from having his name placed in the pool from which jurors are selected." H. Rept. 1087, U.S. Code Cong. and Adm. News 1968, pp. 1794-1795.' (pp. 1112-1113.)*
>
> See also *Camp* v. *United States*, 413 F. 2d 419, 421 (CA5, 1969), cert. den. 396 U. S. 968, 24 L. ed. 2d 434, 90 S. Ct. 451, and cases cited therein."

The United States Supreme Court has consistently denied petitions for the allowance of writs to review lower court decisions in cases where arguments similar to those presented by Petitioner herein are raised (see

for example, *U. S.* v. *Guzman*, (CA2, N.Y.) 468 F. 2d 1245, cert. den. 410 U. S. 937; *U. S.* v. *Kahn*, (CA2, N.Y.) 472 F. 2d 272, cert. den. 411 U. S. 982; *U. S.* v. *Olson*, (CA8, Minn.) 473 F. 2d 686, cert. den. 412 U. S. 905; *U. S.* v. *Hamling*, (CA9, Cal.) 481 F. 2d 307, affd. 418 U. S. 87, reh. den. 419 U. S. 885; *Paige* v. *U. S.*, (CA9, Cal.) 493 F. 2d 22, cert. den. 417 U. S. 935; *U. S.* v. *Fernandez*, (CA9, Cal.) 497 F. 2d 730, cert. den. 420 U. S. 990, 43 L. ed. 2d 670).

CONCLUSION

There is no constitutional infirmity in the selection of juries from voter registration lists. The allowance of a writ of certiorari to review the judgment of the Kansas Supreme Court should be denied.

Respectfully submitted,

CURT T. SCHNEIDER
Attorney General for the State of Kansas
1st Floor—State Capitol Bldg.
Topeka, Kansas 66612
Attorney for Respondent